

AMENDED IN SENATE JULY 3, 2003

AMENDED IN ASSEMBLY JUNE 2, 2003

AMENDED IN ASSEMBLY APRIL 22, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 491

Introduced by Assembly Member Diaz
(Principal coauthor: Senator Alarcon)
(Coauthor: Assembly Member Cohn)

February 14, 2003

An act to add Article 3 (commencing with Section 89730) to Chapter 6 of Part 55 of the Education Code, and to amend Sections 10295 , 10430, and 12100.5 of the Public Contract Code, relating to the California State University.

LEGISLATIVE COUNSEL'S DIGEST

AB 491, as amended, Diaz. California State University: information technology projects.

(1) Existing law establishes the California State University and its various campuses under the administration of the Trustees of the California State University.

This bill would enact a comprehensive statutory scheme relating to information technology projects of the university.

The bill would require any information technology project of the university that exceeds ~~\$250,000~~ \$1,000,000 in direct or related costs to receive independent project oversight and prior approval from the Director of Finance ~~and project implementation oversight from the Department of General Services or another agency with oversight~~

~~authority.~~ *The bill would require an approved project to be submitted to the Governor for consideration and inclusion in the Governor's Budget and would require the project to be reviewed through the annual budget process.*

The bill would generally require the university to take systematic measures to analyze and justify the costs related to information technology projects.

The bill would require the trustees to disclose, prior to entering into a contract with any private vendor, any donations to the university, or to any of the campuses or auxiliary organizations of the university, made by that vendor for up to one year before the date on which the contract is to be executed.

The bill would require the university to take prescribed actions to safeguard electronic records that contain confidential student information.

(2) Existing law, with specified exceptions, provides that all contracts entered into by any state agency for the hiring or purchase of goods and services, as defined, are void unless approved by the Department of General Services. Existing law exempts the California State University, as well as transactions entered into by the trustees, or pursuant to the California State University Contract Law, from this requirement.

This bill would delete this exemption, insofar as it applies to information technology projects of the California State University that are within the scope of the bill, thereby subjecting the university to this requirement with respect to those projects.

(3) Existing law, with specified exemptions, including the acquisition of information technology goods and services, regulates the procurement of materials, supplies, equipment, and services by state agencies. These provisions do not apply to the Regents of the University of California or to the Trustees of the California State University.

The bill would delete the provision that exempts the Trustees of the California State University from these requirements, insofar as it applies to information technology projects of the California State University that are within the scope of the bill, thereby subjecting the trustees to these requirements with respect to these projects.

(4) Existing law generally requires that all state agency contracts for the acquisition of information technology goods or services, whether by lease or purchase, be made by or under the supervision of the Department of General Services. Existing law exempts the Trustees of



the California State University, as well as the governing bodies of the other segments of public postsecondary education, from this supervision, but also requires the trustees to develop policies and procedures, to be maintained in the state university administrative manual, that further the pertinent legislative policies for contracting, but that are without the involvement of the Director of Finance, the Director of General Services, the Department of Finance, or the Department of General Services.

This bill would instead require the trustees to develop these policies and procedures in conjunction with the Director of Finance, ~~the Director of General Services, and in consultation with the Legislative Analyst, or in conjunction with the Department of Finance, or the Department of General Services and in consultation with the Legislative Analyst's Office.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) The California State University (CSU) failed to conduct a
- 4 comprehensive systemwide cost/benefit or needs analysis prior to
- 5 implementing the multimillion dollar Common Management
- 6 System (CMS) computer data project.
- 7 (b) CSU failed to both establish a business plan or a systemwide
- 8 funding plan for CMS.
- 9 (c) CSU procured CMS-related vendor services using
- 10 sole-source contracts.
- 11 (d) CSU is funding the six hundred sixty-two million dollar
- 12 (\$662,000,000) CMS project with resources that could otherwise
- 13 be devoted to supporting classroom instruction, student services,
- 14 and libraries.
- 15 (e) CSU's flexible budget framework exempts it from many
- 16 legislative oversight mechanisms, and the CMS project was not
- 17 subject to the same legislative scrutiny other state information
- 18 technology projects undergo.
- 19 (f) CSU's flexible budgeting environment also allows it to
- 20 make expenditures that may be contrary to priorities established
- 21 by the Legislature.

SEC. 2. Article 3 (commencing with Section 89730) is added to Chapter 6 of Part 55 of the Education Code, to read:

Article 3. Information Technology

89730. (a) It is the intent of the Legislature to ensure that future information technology projects of the university are appropriate expenditures of state resources.

(b) (1) This article applies to, but is not necessarily limited to, any information technology project of the university that exceeds ~~two hundred fifty thousand dollars (\$250,000)~~ *one million dollars (\$1,000,000)* in direct or related costs. An information technology project to which this article applies shall receive independent project oversight and prior approval from the ~~Director of Finance and project implementation oversight from the Department of General Services or from another state agency that is granted oversight authority by statute.~~ *Director of Finance.*

(2) *The Department of Finance, upon approving an information technology project pursuant to this article, shall submit the project proposal to the Governor for consideration and inclusion in the Governor's Budget. An information technology project to which this article applies shall be reviewed through the annual budget process by the Legislative Analyst's Office and the budget committees of the Legislature.*

(3) *Project implementation oversight shall occur after a statute is enacted that grants implementation oversight authority to a state entity in place of the existing implementation oversight authority of the Department of General Services.*

(c) For the purposes of this section, the trustees, in conjunction with ~~the Department of General Services and the Department of Finance,~~ *and in consultation with the Legislative Analyst's Office,* shall develop and adopt both of the following as regulations:

(1) Provision for a feasibility study that includes, but is not necessarily limited to, all of the following:

(A) *A description of the project.*

(B) *A clearly defined statement of the business problems or opportunities being addressed by the proposed project.*

~~(B)~~

(C) *An economic analysis of the cost of the proposed project, as compared with the costs of the current method of operation.*

1 ~~(C) An identified~~

2 (D) *A statement of the specific functionality that is necessary*
3 *to achieve the documented needs of the university as expressed in*
4 *the information technology projects charter.*

5 ~~(D)–.~~

6 (E) Identification of the increased productivity of staff and
7 reduced operational costs that would be attributable to the project.

8 (2) Provision for a cost benefit analysis that includes, but is not
9 necessarily limited to, all of the following:

10 (A) The relative merits of the project, *including, but not*
11 *necessarily limited to, compatibility with existing or future systems*
12 *or programs.*

13 (B) Any projected cost, including in-kind costs, upgrades,
14 integrated costs, maintenance costs, *schedules, capability or*
15 *performance constraints*, and savings.

16 (C) Whether the new outsourcing project could be done by
17 current technical staff if they are provided with sufficient
18 additional training.

19 (D) All identified funding sources for the project, including
20 campus costs.

21 (E) *Potential risks associated with the project, and a*
22 *description of any ongoing efforts to reduce risks.*

23 89733.7. To ensure that they use recommended practices in
24 procurement, the trustees shall plan project procurements to share
25 risks with vendors and consultants, such as by allowing them to
26 propose their solutions and by structuring contracts to protect the
27 university's documented financial and programmatic interests,
28 including provisions to pay only after deliverables have been
29 tested and accepted.

30 89734.1. ~~(a) The trustees shall hire an independent oversight~~
31 ~~consultant to perform various quality assurance functions and to~~
32 ~~evaluate the progress of information technology projects.~~

33 ~~(b)–~~

34 89734.1. The trustees shall provide quarterly cost and
35 progress reports to the Director of Finance, the Legislative
36 Analyst's Office, and the chairs of the appropriate legislative
37 policy and fiscal committees.

38 89734.3. To ensure that potential conflicts of interest and
39 prohibited uses of nonpublic information are adequately

1 addressed, the trustees shall develop guidelines to ensure
2 compliance with Section 19990 of the Government Code.

3 89734.7. Prior to entering into a contract with any private
4 vendor, the trustees shall disclose any donations to the university,
5 or to any of the campuses or auxiliary organizations of the
6 university, made by that vendor for up to one year before the date
7 on which the contract is to be executed. The trustees shall also
8 disclose any donations to the university, or to its campuses or
9 auxiliary organizations, made by that vendor during the term of the
10 contract. The trustees shall provide quarterly reports to the
11 Secretary of State, the Director of Finance, and the Legislative
12 ~~Analyst~~ *Analyst's Office* with respect to these donations.

13 89735.5. In order to ensure the privacy of student and
14 employee records, the university shall comply with all
15 requirements of the Information Practices Act of 1977 (Chapter 1
16 (commencing with Section 1798) of Title 1.8 of Part 4 of Division
17 3 of the Civil Code), with respect to persons involved in the design,
18 development, operation, disclosure, or maintenance of
19 electronically stored personnel records or confidential student
20 records, as well as with respect to any contractor and any employee
21 of a contractor with access to this information.

22 SEC. 3. Section 10295 of the Public Contract Code is
23 amended to read:

24 10295. (a) All contracts entered into by any state agency for
25 (1) the acquisition of goods or elementary school textbooks, (2)
26 services, whether or not the services involve the furnishing or use
27 of goods or are performed by an independent contractor, (3) the
28 construction, alteration, improvement, repair, or maintenance of
29 property, real or personal, or (4) the performance of work or
30 services by the state agency for or in cooperation with any person,
31 or public body, are void unless and until approved by the
32 department. Every contract shall be transmitted with all papers,
33 estimates, and recommendations concerning it to the department
34 and, if approved by the department, shall be effective from the date
35 of the approval.

36 (b) This section applies to any state agency that by general or
37 specific statute is expressly or impliedly authorized to enter into
38 transactions referred to in this section.

39 (c) This section does not apply to any of the following:



(1) (A) Any transaction entered into by the Board of Governors of the California Community Colleges, or by a department under the State Contract Act.

(B) Any transaction entered into by the Trustees of the California State University, or by a department under the California State University Contract Act, with the exception of transactions relating to information technology projects within the scope of Article 3 (commencing with Section 89730) of Chapter 6 of Part 55 of the Education Code. *Implementation oversight of an information technology project of the California State University to which Article 3 (commencing with Section 89730) of Chapter 6 of Part 55 of the Education Code applies shall occur after a statute is enacted that grants implementation oversight authority to a state entity in place of the existing implementation oversight authority of the Department of General Services.*

(2) Any contract of a type specifically mentioned and authorized to be entered into by the Department of Transportation under Section 14035 or 14035.5 of the Government Code, Sections 99316 to 99319, inclusive, of the Public Utilities Code, or the Streets and Highways Code.

(3) Any contract entered into by the Department of Transportation that is not funded by money derived by state tax sources but, rather, is funded by money derived from federal or local tax sources.

(4) Any contract entered into by the Department of Personnel Administration for state employee benefits, occupational health and safety, training services, or combination thereof.

(5) Any contract entered into by the Legislature.

(6) Any contract entered into under the authority of Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code.

SEC. 4. Section 10430 of the Public Contract Code, as amended by Section 1 of Chapter 1122 of the Statutes of 2002, is amended to read:

10430. This chapter does not apply to any of the following:

(a) (1) The Regents of the University of California.

(2) The Trustees of the California State University, with the exception of Section 10365.5, Article 8 (commencing with Section 10410), Article 9 (commencing with Section 10420), and transactions relating to information technology projects within the

1 scope of Article 3 (commencing with Section 89730) of Chapter
2 6 of Part 55 of the Education Code.

3 (b) (1) Transactions covered under Chapter 3 (commencing
4 with Section 12100), except that Sections 10365.5, 10410, and
5 10411 shall apply to all transactions under that chapter.

6 (2) Notwithstanding paragraph (1), Section 10365.5 shall not
7 apply to incidental advice or suggestions made outside of the scope
8 of a consulting services contract.

9 (c) Except as otherwise provided in this chapter, any entity
10 exempted from Section 10295. However, the Board of Governors
11 of the California Community Colleges shall be governed by this
12 chapter, except as provided in Sections 10295, 10335, and 10389.

13 (d) Transactions covered under Chapter 10 (commencing with
14 Section 4525) of Division 5 of Title 1 of the Government Code.

15 (e) Except as provided for in subdivision (c), members of
16 boards or commissions who receive no payment other than
17 payment for each meeting of the board or commission, payment
18 for preparatory time, and payment for per diem.

19 (f) The emergency purchase of protective vests for correctional
20 peace officers whose duties require routine contact with state
21 prison inmates. This subdivision shall remain operative only until
22 January 1, 1987.

23 (g) Spouses of state officers or employees and individuals and
24 entities that employ spouses of state officers and employees, that
25 are vendored to provide services to regional center clients pursuant
26 to Section 4648 of the Welfare and Institutions Code if the vendor
27 of services, in that capacity, does not receive any material financial
28 benefit, distinguishable from the benefit to the public generally,
29 from any governmental decision made by the state officer or
30 employee.

31 SEC. 5. Section 12100.5 of the Public Contract Code is
32 amended to read:

33 12100.5. (a) The Regents of the University of California, the
34 Trustees of the California State University, and the Board of
35 Governors of the California Community Colleges shall not be
36 subject to this chapter except as provided in subdivision (b).

37 (b) (1) The trustees shall develop policies and procedures in
38 the State University Administrative Manual that further the
39 legislative policies for contracting expressed in this chapter in
40 conjunction with the Director of Finance and ~~the Director of~~

1 ~~General Services or the Department of Finance and the~~
2 ~~Department of General Services. in consultation with the~~
3 ~~Legislative Analyst, or in conjunction with the Department of~~
4 ~~Finance and in consultation with the Legislative Analyst's Office.~~

5 (2) The board of governors shall adopt policies and procedures
6 in its administrative manual that further the legislative policies for
7 contracting expressed in this chapter, but without the involvement
8 of the Director of Finance and the Director of General Services or
9 the Department of Finance and the Department of General
10 Services.

